

ESTTA Tracking number: **ESTTA357793**

Filing date: **07/14/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189555
Party	Defendant CellCeuticals Skin Care, Inc.
Correspondence Address	Louis C. Paul Louis C. Paul and Associates, PLLC. 420 East 61st Street, Suite 8E New York, NY 10065 UNITED STATES trademarks@cosmeticslaw.com
Submission	Other Motions/Papers
Filer's Name	Louis C. Paul
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Signature	/LCP/
Date	07/14/2010
Attachments	562-5001 -- 2010.07.14 -- Motion for Failure to Prosecute.pdf ( 5 pages ) (155041 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/469080  
Published in the *Official Gazette* on October 7, 2008  
Trademark: CELLGENESIS

Cell Genesys, Inc.,  Opposer,  v.  CellCeuticals Skin Care, Inc.,  Applicant.	Opposition No.: 91189555  APPLICANT'S MOTION FOR JUDGMENT FOR FAILURE TO PROSECUTE
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Pursuant to 37 C.F.R. §2.132(a), CellCeuticals Skin Care, Inc. ("Applicant") files this Motion for Judgment due to Opposer Cell Genesys, Inc.'s ("Opposer") failure to prosecute and prove its case, and respectfully requests that judgment be rendered against Opposer and that the above referenced Opposition proceeding be dismissed, with prejudice, on the grounds of failure by Opposer to prosecute this matter.

By Order of the United States Trademark Trial and Appeal Board dated September 14, 2009, the 30-day testimony period for the party in Opposer's position closed on July 7, 2010. To the best of Applicant's knowledge Opposer has not taken any testimony of its own or offered any other evidence in this matter. Opposer has not requested an extension of its time period within which to do so, much less contacted counsel for Applicant with respect to any extension of Opposer's testimony period or other trial dates. To the contrary, as shown in

the attached correspondence from Opposer dated June 24, 2010, counsel for Opposer has stated “[f]or business reasons, our client has decided to withdraw the opposition against CELLGENESIS.”

It is respectfully submitted that there is no “excusable neglect” on the part of Petitioner in this proceeding, only a lack of interest in pursuing the matter, as evidenced by the fact that Opposer served no discovery whatsoever on Applicant and failed to take any discovery during its testimony period.

The opening of Applicant’s testimony period begins July 22, 2010. Thus this Motion is timely filed.

WHEREFORE, Applicant respectfully requests that the above-referenced Opposition proceeding be dismissed, with prejudice, due to Opposer’s failure to prosecute.

Dated: July 14, 2010

Respectfully Submitted,

By:

A handwritten signature in cursive script, appearing to read "Louis C. Paul", written over a horizontal line.

Louis C. Paul & Associates, PLLC  
Attorneys for Applicant

150 East 58<sup>th</sup> Street, 34<sup>th</sup> Floor  
New York, NY 10155  
Tel – 212.223.8200  
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**Subject: Trademark Opposition: Cell Genesys v. CellCeuticals**

**Date:** Thursday, June 24, 2010 7:13 PM

**From:** Bush, Chelseaa <cbush@orrick.com>

**To:** Louis C. Paul lpaul@cosmeticslaw.com

**Conversation:** Trademark Opposition: Cell Genesys v. CellCeuticals

Louis,

For business reasons, our client has decided to withdraw the opposition against CELLGENESIS. Please sign and PDF me the attached withdrawal request so that we may file it with the TTAB and terminate the proceeding.

Thank you, Chelseaa



**CHELSEAA BUSH**

*Associate*

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"EMF <orrick.com>" made the following annotations.

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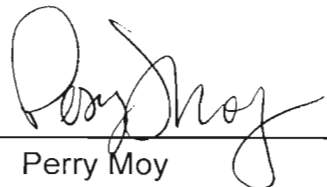
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### **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 14<sup>th</sup> day of July 2010, a copy of the foregoing Motion for Judgment for Failure to Prosecute was caused to be served upon counsel for Opposer Cell Genesys, Inc. by depositing the same with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Beth M. Goldman  
Chelseaa Bush  
Orrick, Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105

By:   
Perry Moy  
Senior Paralegal